UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

SW

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/085,135 | 03/01/2002 | Kunihiko Hori | 020235 | 2700 |

23850 7590 03/18/2004

ARMSTRONG, KRATZ, QUINTOS, HANSON & BROOKS, LLP
1725 K STREET, NW
SUITE 1000
WASHINGTON, DC 20006

| EXAMINER | |
|---|---|
| THANH, QUANG D | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3764 | 9 |

DATE MAILED: 03/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. 10/085,135 | Applicant(s) HORI ET AL. | |
|---|---|---|---|
| | Examiner Quang D. Thanh | Art Unit 3764 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *29 December 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *9-13* is/are allowed.

6)☒ Claim(s) *1-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 5.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1,2,4 and 6-8 are rejected under 35 U.S.C. 103(b) as being 35 U.S.C. 103(a) as being unpatentable over by Inbe et al. (5,993,401) in view of Stark et al. (6,371,123).

2. Re claim 1, Inbe discloses a massage device 1 (figs. 1-2) for giving massage by therapeutic members 23 (fig. 2), the device comprising: a sensor (heartbeat sensor 11in fig. 1) for detecting a physiological quantity (heartbeat), means for judging (relax-level determining unit 40/45 in fig. 8 and col. 6, lines 7-24) the psychological state (relax state) based on the physiological quantity detected; wherein the means for judging (relax-level determining unit 40/45) the user's psychological state judges the relax state based on a time rate of change of the physiological quantity (rate of the change of the heartbeat in col. 4, lines 1-27 and col. 6, lines 7-24). Inbe teaches microprocessors having a heartbeat attainment-time measuring section as a means for holding heartbeat data (fig. 13, col. 9, lines 1-40) for determining the psychological state to vary the operation of the device. It would appear that Inbe's microprocessor for holding

physiological quantity over a period of time in order to judge a change in the relax state would comprehend the claimed means for holding histories of psychological state. To any extend it is felt that memory storage of Inbe does not comprehend the means for holding histories of psychological state then Stark teaches a medical system comprising a control unit that has a database of historic patient for storing data resulting from the monitoring of sensor (see abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Inbe's device, to include means for holding histories of psychological state of a person to be massaged (this can take form of a storage memory in the microprocessor), as suggested by Stark, for the purpose of providing a storage memory holding histories of psychological state that enables the control unit to process and operate the massager members accordingly based on this specific data.

3. Re claims 2, 4 and 6, the sensor includes pulse (heartbeat) sensor 11 (fig. 2); the psychological state judging means provides indication of relax level by the change rate of heartbeat (low level inherently indicating relaxed state and vice versa) as disclosed in col. 6, lines 25-59.

4. Re claims 7-8, the combined references disclose the claimed invention having all features, except for a counting means for counting a frequency of the user's tense state when being massaged at different body parts and a means for displaying the count. However, Stark also teaches a detection device having sensor 22 that provides inputs to a hand-held computer 20, and thus obviously capable of counting and storing the frequency of stress state (tense) such that the computer 20 would process and input the

count frequency to the main control computer 16 (fig. 1) and the count could be easily displaced on the monitor screen 14 of the main computer (fig. 1).

5. Claims 3 and 5 are rejected under 35 U.S.C. 103(b) as being 35 U.S.C. 103(a) as being unpatentable over by Inbe/Stark and further in view of Ulrich (6,024,575). Inbe/Stark discloses the claimed invention including sensors for breathing rate, heart rate, and brain wave, except for galvanic skin response (GSR) and skin temperature sensors. However, Ulrich teaches that, in additional to physiological sensors such as galvanic skin response (GSR), heart rate, and blood pressure; a thermistor may be used for monitoring changes in the skin temperature as the indicator of stress level (col. 4, lines 37-39). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to include the skin resistance sensor and the thermistor, as suggested by Ulrich, since both are well known in the art as equivalent means for monitoring physiological information as the indicator of stress level.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10-16 of copending Application No. 09/995,801. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the present application are broader and are met by the narrower copending claims. In the instant, claims 10-16 (especially claim 11) of copending Application No. 09/665,801 discloses all the elements that are recited in claims 1-6 of the present application, including means for holding histories of psychological state (memory means in claim 11 of copending Application No. 09/995,801).

***Allowable Subject Matter***

Claims 9-13 are allowed over prior art of records.

***Response to Arguments***

Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.

In response to Applicant's question regarding the rejections of claims 1-6 for obviousness-type double patenting as being unpatentable over claims 10-16 of copending Application No. 09/995,801, please be advised that the rejection would still be maintained if claim 11 of copending Application No. 09/995,801 were canceled.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (703) 605-4354. The examiner can normally be reached on Monday-Thursday & alternate Friday.
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703) 308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and for After Final communications.
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

Quang D. Thanh
Patent Examiner
Art Unit 3764
March 10, 2004

QT

Danton D. DeMille
Primary Examiner